

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Jake Vivier, )  
 )  
 Plaintiff, ) Case No: 2:12-cv-68  
 )  
 vs. ) **REPORT AND RECOMMENDATION**  
 )  
 Ameron International Corporation, )  
 )  
 Defendant. )

Plaintiff filed a complaint against the defendant on August 2, 2012. (Doc. #1). “If a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ P. 4(m). On December 6, 2012, the court entered a order to show cause why the case should not be dismissed without prejudice for failure to effectuate service. (Doc. #6). Alternatively, the court allowed plaintiff until January 7, 2013, to serve the defendant and file a certificate or waiver of service.

Id.

On January 7, 2013, in response to the court's order, plaintiff requested an additional thirty days to effectuate service. (Doc. #7). The court granted plaintiff's motion and ordered that the summons and complaint be served by February 8, 2013. (Doc. #9). The court noted that another extension would not be granted without good cause shown. Id. Service was not effectuated by February 8, 2013, and the plaintiff did not request an extension.

On March 1, 2013, the court entered a second order to show cause why the plaintiff had not complied with the court's order that the summons and complaint be served by February 8, 2013. The plaintiff had until March 11, 2013, to respond to the court's second order to show

cause.<sup>1</sup> The plaintiff failed to respond and to date, no certificate or waiver of service has been filed indicating defendant has been served with the summons and complaint. In accordance with Fed. R. Civ P. 4(m), it is **RECOMMENDED** that the action be **DISMISSED** without prejudice.<sup>2</sup>

Dated this 13th day of March, 2013.

/s/ Karen K. Klein  
Karen K. Klein  
United States Magistrate Judge

**Notice of Right to Object**

Pursuant to Rule 72(a) and (b), Federal Rules of Civil Procedure, and District of North Dakota Local Court Civil Rule 72.1(D)(2) and (3), objections to this Report and Recommendation are due by March 27, 2013.

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<sup>1</sup> Plaintiff was advised that if he failed to respond to the court's second order to show cause his case may be dismissed. (Doc. #10).

<sup>2</sup> This case was directly assigned to the Magistrate Judge, but plaintiff failed to submit the Consent/Reassignment form despite two notices of direct assignment being sent to the plaintiff.